



**Signed: July 08, 2010**

**EDWARD D. JELLEN**  
**U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

No. 07-41274 EDJ  
Chapter 11

REJ PROPERTIES, INC.,

Debtor. /

AT-TSE MAT-TKVĀR

Adv Pro No 10-04114 AT

**Plaintiff**

vs.

CHRISTOPHER MOSER,

**Defendant . /**

MEMORANDUM: MOTION TO REMAND TO STATE COURT

The above-captioned adversary proceeding was commenced May 7, 2010 when the defendant herein, Christopher Moser ("Moser"), filed a Notice of Removal of State Court Action. Moser is the trustee in bankruptcy of the estate of Robert Jacobson ("Jacobson"), pending in the United States Bankruptcy Court for the Eastern District of

## Memorandum

1 Texas.<sup>1</sup> The removed action was filed by Alise Malikyar  
2 ("Malikyar"), Jacobson's spouse, in the Alameda County Superior  
3 Court, State of California. Malikyar's action against Moser alleges  
4 that Moser improperly treated her separate property as property of  
5 the Jacobsen bankruptcy estate. Her complaint includes causes of  
6 action for negligence, intentional tort, and fraud.

7 On May 17, 2010 Malikyar filed a motion to remand this action  
8 to the Alameda Superior Court. A hearing was held on Malikyar's  
9 motion on June 21, 2010. William McLaughlin appeared on behalf of  
10 Moser. Malikyar did not appear. For the reasons hereinafter  
11 discussed, the court will deny Malikyar's motion, and instead, will  
12 transfer venue to the United States Bankruptcy Court for the Eastern  
13 District of Texas.

14 In her motion to remand, Malikyar argues that this court lacks  
15 jurisdiction to hear her complaint against Moser because her claims  
16 arise under state law. The court agrees that it lacks subject  
17 matter jurisdiction, but not for the reason urged by Malikyar.

18 This is so because a trustee appointed by a bankruptcy court  
19 may not be sued in a foreign jurisdiction without permission of the  
20 court that appointed the trustee. See In re Crown Vantage, 421 F.3d  
21 963, 970 (9th Cir. 2005) (holding that "a party must first obtain  
22 leave of the bankruptcy court before it initiates an action in  
23 another forum against a bankruptcy trustee or other officer  
24 appointed by the bankruptcy court for acts done in the officer's

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25  
26 <sup>1</sup>Case no. 07-41092.

1 official capacity."); see also *Barton v. Barbour*, 104 U.S. 126, 136-  
2 37 (1881) (holding that the common law bars suits against receivers  
3 in a state court other than the court charged with administration of  
4 the estate, absent leave of that court.).

5 Moser was appointed trustee of the Jacobsen bankruptcy estate  
6 in the bankruptcy court for the Eastern District of Texas. Moser's  
7 "home court" has not granted Malikyar leave to bring an action  
8 against Moser in another forum.

9 Therefore, the court directs Moser to submit an order denying  
10 Malikyar's motion to remand this adversary proceeding to state  
11 court, and transferring it to the United States Bankruptcy Court for  
12 the Eastern District of Texas.

\* \*END OF ORDER\*\*

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## Memorandum

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## COURT SERVICE LIST

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**UNITED STATES BANKRUPTCY COURT**  
NORTHERN DISTRICT OF CALIFORNIA  
1300 Clay Street (2d fl.)  
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## Notice Recipients

District/Off: 0971-4

Case: 10-04114

User: plenhart

Form ID: pdfeoap

Date Created: 7/9/2010

Total: 4

**Recipients of Notice of Electronic Filing:**

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TOTAL: 1

**Recipients submitted to the BNC (Bankruptcy Noticing Center):**

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TOTAL: 3